

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 249

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN A BASIC SENTENCE OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING A NEW SECTION OF THE CRIMINAL SENTENCING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

" [NEW MATERIAL] NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS AGAINST A PERSON OR HIS PROPERTY BECAUSE OF THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, GENDER, SEXUAL ORIENTATION OR GENDER IDENTITY OF THE PERSON-- ALTERATION OF BASIC SENTENCE-- SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by the court or

underscored material = new  
[bracketed material] = delete

1 jury shows that an offender committed a petty misdemeanor in  
2 which a person was intentionally injured or his property was  
3 intentionally damaged because of the actual or perceived race,  
4 religion, color, national origin, ancestry, gender, sexual  
5 orientation or gender identity of that person, whether or not  
6 the offender's belief or perception was correct, the basic  
7 sentence of imprisonment prescribed for the offense in Section  
8 31-19-1 NMSA 1978 may be increased by thirty days. The  
9 sentence imposed pursuant to the provisions of this subsection  
10 shall be the first thirty days served and may be suspended or  
11 deferred.

12 B. When an offender commits a second or subsequent  
13 petty misdemeanor in which a person was intentionally injured  
14 or his property was intentionally damaged because of the actual  
15 or perceived race, religion, color, national origin, ancestry,  
16 gender, sexual orientation or gender identity of that person,  
17 whether or not the offender's belief or perception was correct,  
18 the basic sentence of imprisonment prescribed for the offense  
19 in Section 31-19-1 NMSA 1978 may be increased by sixty days.  
20 The sentence imposed pursuant to the provisions of this  
21 subsection shall be the first sixty days served and may be  
22 suspended or deferred.

23 C. When a separate finding of fact by the court or  
24 jury shows that an offender committed a misdemeanor in which a  
25 person was intentionally injured or his property was

underscored material = new  
[bracketed material] = delete

1 intentionally damaged because of the actual or perceived race,  
2 religion, color, national origin, ancestry, gender, sexual  
3 orientation or gender identity of that person, whether or not  
4 the offender's belief or perception was correct, the basic  
5 sentence of imprisonment prescribed for the offense in Section  
6 31-19-1 NMSA 1978 may be increased by ninety days. The  
7 sentence imposed pursuant to the provisions of this subsection  
8 shall be the first ninety days served and may be suspended or  
9 deferred.

10 D. When an offender commits a second or subsequent  
11 misdemeanor in which a person was intentionally injured or his  
12 property was intentionally damaged because of the actual or  
13 perceived race, religion, color, national origin, ancestry,  
14 gender, sexual orientation or gender identity of that person,  
15 whether or not the offender's belief or perception was correct,  
16 the basic sentence of imprisonment prescribed for the offense  
17 in Section 31-19-1 NMSA 1978 may be increased by one hundred  
18 eighty days. The sentence imposed pursuant to the provisions  
19 of this subsection shall be the first one hundred eighty days  
20 served and may be suspended or deferred.

21 E. When a separate finding of fact by the court or  
22 jury shows that an offender committed a noncapital felony in  
23 which a person was intentionally injured or his property was  
24 intentionally damaged because of the actual or perceived race,  
25 religion, color, national origin, ancestry, gender, sexual

. 143433. 1

underscored material = new  
[bracketed material] = delete

1 orientation or gender identity of that person, whether or not  
2 the offender's belief or perception was correct, the basic  
3 sentence of imprisonment prescribed for the offense in Section  
4 31-18-15 NMSA 1978 may be increased by one year. The sentence  
5 imposed pursuant to the provisions of this subsection shall be  
6 the first year served and may be suspended or deferred. When  
7 the offender is a youthful offender, the sentence imposed  
8 pursuant to the provisions of this subsection may be increased  
9 by one year.

10 F. When an offender commits a second or subsequent  
11 noncapital felony in which a person was intentionally injured  
12 or his property was intentionally damaged because of the actual  
13 or perceived race, religion, color, national origin, ancestry,  
14 gender, sexual orientation or gender identity of that person,  
15 whether or not the offender's belief or perception was correct,  
16 the basic sentence of imprisonment prescribed for the offense  
17 in Section 31-18-15 NMSA 1978 may be increased by three years.  
18 The sentence imposed pursuant to the provisions of this  
19 subsection shall be the first three years served and may be  
20 suspended or deferred. When the offender is a youthful  
21 offender, the sentence imposed pursuant to the provisions of  
22 this subsection may be increased by three years.

23 G. If the case is tried before a jury and if a  
24 prima facie case has been established showing that in the  
25 commission of the offense a person was intentionally injured or

underscored material = new  
[bracketed material] = delete

1 his property was intentionally damaged because of the actual or  
2 perceived race, religion, color, national origin, ancestry,  
3 gender, sexual orientation or gender identity of that person,  
4 whether or not the offender's belief or perception was correct,  
5 the court shall submit the issue to the jury by special  
6 interrogatory. If the case is tried by the court and if a  
7 prima facie case has been established showing that in the  
8 commission of the offense a person was intentionally injured or  
9 his property was intentionally damaged because of the actual or  
10 perceived race, religion, color, national origin, ancestry,  
11 gender, sexual orientation or gender identity of that person,  
12 whether or not the offender's belief or perception was correct,  
13 the court shall decide the issue and shall make a separate  
14 finding of fact regarding the issue.

15 H. As used in this section:

16 (1) "sexual orientation" means  
17 heterosexuality, homosexuality or bisexuality, whether actual  
18 or perceived; and

19 (2) "gender identity" means a person's self-  
20 perception, or perception of that person by another, of the  
21 person's identity as a male or female based upon the person's  
22 appearance, behavior or physical characteristics that are in  
23 accord or opposed to the person's physical anatomy, chromosomal  
24 sex or sex at birth. "

25 Section 2. EFFECTIVE DATE. --The effective date of the

. 143433. 1

underscored material = new  
[bracketed material] = delete

1 provisions of this act is July 1, 2003.

2 - 6 -

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25